

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD THOMAS,

Plaintiff,

v.

ANTHONY HEDGPATH, et al.,

Defendants.

Case No.: C 12-3071 CW (PR)

ORDER OF SERVICE

INTRODUCTION

Plaintiff, a state prisoner incarcerated at Salinas Valley State Prison (SVSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by prison officials and medical staff at SVSP. His motion for leave to proceed in forma pauperis has been granted.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must

1 allege two essential elements: (1) that a right secured by the
2 Constitution or laws of the United States was violated, and
3 (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 II. Plaintiff's Claims

7 The operative pleading in this case is Plaintiff's First
8 Amended Complaint (docket no. 6), which supersedes the original
9 complaint.

10 Plaintiff alleges that he is mentally ill and because of his
11 mental health needs and inability to live compatibly with other
12 prisoners he was placed on single-cell status in 2005. In 2010,
13 however, prison officials determined that he no longer was
14 entitled to single-cell housing and required that he be housed
15 with a cellmate. Plaintiff's administrative appeals were denied
16 at all levels of review. Thereafter, in 2012, the Monterey County
17 Superior Court denied his state habeas corpus petition seeking
18 injunctive relief.

19 Plaintiff claims that the decision to house him with another
20 prisoner is arbitrary and based solely on space concerns and was
21 made in retaliation for his having filed other lawsuits against
22 SVSP prison officials. He further claims that prison officials
23 and medical staff, by forcing him to be double-celled, knowingly
24 are exacerbating the symptoms of his mental illness, placing him
25 in danger of being attacked by his cellmate and causing him to
26 face disciplinary measures if he refuses to double-cell.

27 When Plaintiff's allegations are construed liberally, they
28 state cognizable Eighth Amendment claims for deliberate

1 indifference to his serious medical needs, which include serious
2 mental health needs, see Doty v. County of Lassen, 37 F.3d 540,
3 546 (9th Cir. 1994), and deliberate indifference to his safety,
4 see Farmer v. Brennan, 511 U.S. 825, 832-33 (1994). They also
5 state a cognizable First Amendment retaliation claim. Rhodes v.
6 Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).¹

7 CONCLUSION

8 For the foregoing reasons, the Court orders as follows:

9 1. Plaintiff states cognizable claims for deliberate
10 indifference to his serious medical needs and his safety, and for
11 retaliation.

12 The Clerk of the Court shall mail a Notice of Lawsuit and
13 Request for Waiver of Service of Summons, two copies of the Waiver
14 of Service of Summons, a copy of the First Amended Complaint
15 (Docket no. 6) and all attachments thereto and a copy of this
16 Order to SVSP Defendants Warden Anthony Hedgpath, Acting Chief
17 Deputy Warden L. Trexler, Acting Chief Deputy Warden A. Solis,
18 Facility D Captain W. Muniz, Facility C Captain N. Walker,
19 Correctional Counselor II R. Burgh, Correctional Counselor I J.
20 Martin, Correctional Counselor I D. Garcia, Correctional Counselor
21 I R. Gaither, and Psychiatric Technician Bonilla. The Clerk shall
22 also mail a copy of the complaint and a copy of this Order to the
23 State Attorney General's Office in San Francisco, and a copy of
24 this Order to Plaintiff.

25
26 ¹ Plaintiff also claims the violation of his right to equal
27 protection. However, the allegations in the complaint do not
28 state a cognizable claim for relief on this ground. Accordingly,
this claim is DISMISSED without prejudice.

2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure require them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of such service unless good cause be shown for their failure to sign and return the waiver forms. If service is waived, this action will proceed as if Defendants had been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file an answer before sixty days from the date on which the request for waiver was sent. (This allows a longer time to respond than would be required if formal service of summons is necessary.)

Defendants are advised to read the statement set forth at the foot of the waiver form that more completely describes the duties of the parties with regard to waiver of service of the summons. If service is waived after the date provided in the Notice but before Defendants have been personally served, the answer shall be due sixty days from the date on which the request for waiver was sent or twenty days from the date the waiver form is filed, whichever is later.

3. Defendants shall answer the complaint in accordance with the Federal Rules of Civil Procedure. The following briefing schedule shall govern dispositive motions in this action:

a. No later than thirty days from the date their answer is due, Defendants shall file a motion for summary judgment or other dispositive motion. If Defendants file a motion for summary judgment, it shall be supported by adequate factual

1 documentation and shall conform in all respects to Federal Rule of
2 Civil Procedure 56. If Defendants are of the opinion that this
3 case cannot be resolved by summary judgment, they shall so inform
4 the Court prior to the date the summary judgment motion is due.
5 All papers filed with the Court shall be promptly served on
6 Plaintiff.

7 At the time of filing the motion for summary judgment or
8 other dispositive motion, Defendants shall comply with the Ninth
9 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.
10 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and
11 provide Plaintiff with notice of what is required of him to oppose
12 a summary judgment motion or a motion to dismiss for failure to
13 exhaust administrative remedies.

14 b. Plaintiff's opposition to the motion for summary
15 judgment or other dispositive motion shall be filed with the Court
16 and served on Defendants no later than twenty-eight days after the
17 date on which Defendants' motion is filed.

18 Before filing his opposition, Plaintiff is advised to read
19 the notice that will be provided to him by Defendants when the
20 motion is filed, and Rule 56 of the Federal Rules of Civil
21 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party
22 opposing summary judgment must come forward with evidence showing
23 triable issues of material fact on every essential element of his
24 claim). Plaintiff is cautioned that because he bears the burden
25 of proving his allegations in this case, he must be prepared to
26 produce evidence in support of those allegations when he files his
27 opposition to Defendants' summary judgment motion. Such evidence
28 may include sworn declarations from himself and other witnesses to
the incident, and copies of documents authenticated by sworn

1 declaration. Plaintiff will not be able to avoid summary judgment
2 simply by repeating the allegations of his complaint.

3 c. Defendants shall file a reply brief no later than
4 fourteen days after the date Plaintiff's opposition is filed.

5 d. The motion shall be deemed submitted as of the date
6 the reply brief is due. No hearing will be held on the motion
7 unless the Court so orders at a later date.

8 4. Discovery may be taken in this action in accordance with
9 the Federal Rules of Civil Procedure. Leave of the Court pursuant
10 to Rule 30(a)(2) is hereby granted to Defendants to depose
11 Plaintiff and any other necessary witnesses confined in prison.

12 5. All communications by Plaintiff with the Court must be
13 served on Defendants, or Defendants' counsel once counsel has been
14 designated, by mailing a true copy of the document to Defendants
15 or Defendants' counsel.

16 6. It is Plaintiff's responsibility to prosecute this case.
17 He must keep the Court informed of any change of address and must
18 comply with the Court's orders in a timely fashion.

19 7. Extensions of time are not favored, though reasonable
20 extensions will be granted. Any motion for an extension of time
21 must be filed no later than fourteen days prior to the deadline
22 sought to be extended.

23 IT IS SO ORDERED.

24 Dated: 4/5/2013



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE